



Southeast Fishery Bulletin

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FINAL RULE TO ESTABLISH GULF OF MEXICO RED SNAPPER INDIVIDUAL FISHING QUOTA (IFQ) REFERENDUM PROCEDURES AND VOTE-WEIGHTING FORMULA Small Entity Compliance Guide

The National Marine Fisheries Service (NOAA Fisheries) announces the publication of a final rule to establish referendum procedures and a vote-weighting formula for the Gulf of Mexico (Gulf) Red Snapper Individual Fishing Quota (IFQ) Program. It was published in the *Federal Register* on February 12, 2004, with an effective date of February 12, 2004. This final rule provides potential participants with additional information about the schedule, procedures, and eligibility requirements for participating in referendums to determine whether or not an IFQ program for the Gulf commercial red snapper fishery should be prepared, and if so, whether it should subsequently be submitted to the Secretary of Commerce (Secretary) for review. The intended effect of this final rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Referendum Processes

Establishment of a red snapper IFQ program is a two-tiered process requiring that separate referendums be conducted by NOAA Fisheries. In the first referendum, fishermen qualified to vote will be asked to decide whether an IFQ program should be prepared. NOAA Fisheries will present the results of the first referendum to the Gulf of Mexico Fishery Management Council (Council), and, at that time, the Council may elect to proceed with development of an IFQ plan amendment (assuming a majority vote "yes" for the first referendum). After preparation of an IFQ plan amendment, the Council may vote to submit the plan amendment to the Secretary, pending approval by those voting in the second referendum. In the second referendum, fishermen qualified to vote will be asked to decide whether the alternatives proposed in the IFQ plan amendment are acceptable and may be submitted to the Secretary for review. It should be noted, however, that even if both referendums pass, the Secretary is not mandated to enact an IFQ program.

Who Would Be Eligible to Vote in the Referendums?

Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. After careful consideration of those criteria, the practicality and fairness of several possible interpretations, and public comments, NOAA Fisheries has determined that the following persons would be eligible to vote in the referendums.

For the initial referendum:

(A) A person who according to NOAA Fisheries' permit records has continuously held a Gulf of Mexico

red snapper endorsement/Class 1 license from September 1, 1996, through February 12, 2004;

(B) in the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NOAA Fisheries' permit records holds such Class 1 license as of February 12, 2004;

(C) in the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of February 12, 2004, as determined by NOAA Fisheries' permit records; and

(D) a vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season between January 1, 1993, and September 1, 1996.

Eligibility criteria for the second referendum are identical to that established for the first referendum except for the date of publication in the *Federal Register* of the final rule implementing those procedures. This date will be announced in a future Southeast Fisheries Bulletin if the first referendum passes by a majority "yes" vote by eligible voters and the Council then elects to proceed with development of an IFQ plan amendment.

How Would Votes Be Weighted?

Section 407(c)(2) of the Magnuson-Stevens Act requires that NOAA Fisheries develop a formula to weight votes based on the proportional harvest under each eligible endorsement and by each eligible captain between the period January 1, 1993, and September 1, 1996. NOAA Fisheries has obtained applicable red snapper landings data from the Southeast Fisheries Science Center reef fish logbook database. Information from the NOAA Fisheries' Southeast Regional Office permit database has been used to assign total applicable landings to each eligible voter (red snapper endorsement/Class 1 license holder, lessee/lessor, or vessel captain). In cases where only one eligible voter has eligibility tied to a particular license, all applicable landings associated with that license accrue to that voter, and the voter will be assigned a vote-weighting factor of one vote per pound. In cases where more than one eligible voter has eligibility tied to a particular license, e.g., lessee and lessor, or a qualifying vessel captain and a license holder, all eligible voters associated with that license will have their vote weighted equally such that their combined vote will equal one vote per pound of landings applicable to that license. For example, if a qualifying captain is eligible based on his/her landings under a specific license during the relevant time period, and that license is now held by a license holder who is not involved with lease arrangements with that license, but who is not the same

qualifying captain, then each would get one-half vote per pound of landings associated with the license. In this example, should the current holder lease the same license, then each participant would have their vote weighted as one-third of a vote per pound, so that their combined vote would equal the total number of pounds associated with that license.

The weighting procedure is complicated somewhat by requirements to protect the confidentiality of landings data, when the applicable landings history involves landings by different entities. To address confidentiality concerns, NOAA Fisheries has established a series of categories (ranges) of red snapper landings based on 5,000-pound intervals (e.g., 0-5000 pounds; 5,001-10,000 pounds, etc.) concluding with the interval that includes the highest documented landings. The total landings between the period January 1, 1993, and September 1, 1996, associated with each license, has been attributed to the appropriate category. The overall landings assigned to each category was determined. That average number of pounds is the base applied to the vote-weighting factor for each eligible voter whose landings fall within that category. For example, if the overall average number of pounds attributed to the 5,001-10,000 pound category is 8,150 pounds, each eligible voter within that category would receive votes equal to 8,150 multiplied by the applicable vote weighting factor, e.g., $8,150 \times 1.0 = 8,150$ votes if only one voter was associated with that license; $8,150 \times 0.5 = 4,075$ votes each for a lessee and lessor associated with the same license; $8,150 \times 0.33 = 2,690$ votes each for a qualifying vessel captain, lessee, and lessor all associated with the same license.

How Would the Vote Be Conducted?

On or about February 12, 2004, NOAA Fisheries will mail each eligible voter a ballot that specifies the number of votes (weighting) that the voter is assigned. NOAA Fisheries will mail the ballots and associated explanatory information, via express certified mail return receipt requested, to the address of record indicated in NOAA Fisheries' permit database for red snapper endorsement/Class1 license holders and, for vessel captains, to the address provided by the captains during the prior information solicitation that ended August 18, 2003. All votes assigned to the eligible voters must be cast for the same decision, i.e., either all to approve or all to disapprove the applicable referendum question. The ballot must be signed by the eligible voter. NOAA Fisheries has provided a stamped self-addressed envelope for return of the ballots to the agency. Ballots must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N, St. Petersburg, Florida 33702. Ballots for the initial referendum must be received at that

address by 4:30 p.m., eastern time, February 27, 2004; ballots received after that deadline will not be considered in determining the outcome of the initial referendum.

How Would the Outcome of the Referendums Be Determined?

Vote counting will be conducted by NOAA Fisheries. Approval or disapproval will be determined by a majority of the votes cast (i.e., a number greater than one-half of the total votes cast). NOAA Fisheries will prepare a Fisheries Bulletin announcing the results of each referendum that is conducted and will distribute the bulletin to all Gulf reef fish permittees, including dealers, and to other interested parties. The results will also be posted on NOAA Fisheries Southeast Regional Office's Web site at <http://caldera.sero.nmfs.gov>.

What Would Happen After the Initial Referendum?

NOAA Fisheries would present the results of the initial referendum at the March 8-11, 2004, Council meeting in Mobile, Alabama. If the initial referendum fails, the Council cannot proceed with preparation of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. If the initial referendum is approved, the Council would be authorized, if it so decides, to proceed with the development of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. The proposed IFQ program would be developed through the normal Council and rulemaking process that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. The plan amendment and regulations would only be submitted to the Secretary for review and approval or disapproval if in a second referendum approval of the submission was passed by a majority of the votes cast by the eligible voters as described in the final rule. NOAA Fisheries would announce any required second referendum by publishing a notice in the *Federal Register* that would provide all pertinent information regarding the referendum.

This Small Entity Compliance Guide complies with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. Any discrepancies between this document and the rule as published in the *Federal Register* will be resolved in favor of the *Federal Register*.

NOAA Fisheries is an agency of the Commerce Department's National Oceanic and Atmospheric Administration.